

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TECHNOGYM S.p.A.,

Plaintiff,

v.

SPORTS ART AMERICA, INC.,

Defendant.

Case No. C10-0358RSL

ORDER GRANTING MOTION TO
DISMISS U.S. PATENT NO. 7,115,073
AND TO AMEND ASSERTED
CLAIMS AND INFRINGEMENT
CONTENTIONS

This matter comes before the Court on plaintiff's motion to dismiss U.S. Patent No. 7,115,073 (the "'073 patent") from these proceedings and to allow plaintiff to amend its claim contentions to reflect the dismissal of that patent. Defendant has not responded to the motion, which, pursuant to Local Rule 7, the Court construes as a concession that the motion has merit.

The claims of the '073 patent are primarily directed toward a "swing-arm" embodiment of the "Skatestrider" type of exercise device, which is used to simulate skating or roller blading movement in the user. Plaintiff states that through its review of the prosecution history of the '073 patent, it discovered that the published patent contains claims that were withdrawn during the prosecution and should not have been included in the issued patent. Plaintiff notes that the withdrawn claims cannot be asserted against defendant's accused machine, the S770 Pinnacle

1 Trainer. Therefore, the '073 patent should be dismissed. The dismissal does not appear to affect
2 plaintiff's claims that the S770 Pinnacle Trainer infringes U.S. Patent Nos. 6,786,850 and
3 7,556,592.

4 Accordingly, plaintiff's motion (Dkt. #23) is GRANTED. U.S. Patent No. 7,115,073 is
5 dismissed from these proceedings, and plaintiff may file, within ten days of the date of this
6 order, its amended claim contentions to reflect the dismissal of that patent.

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8 DATED this 7th day of March, 2011.

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12 Robert S. Lasnik
13 United States District Judge
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